

Amendment No. 1 to SB2172

Beavers  
Signature of Sponsor

**AMEND Senate Bill No. 2172**

**House Bill No. 2218\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Tennessee Controlled Substance Analogue Act of 2012".

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following new section:

39-17-453.

(a)

(1) As used in this section, "controlled substance analogue" means a capsule, pill, powder, product or other substance, however constituted:

(A) The chemical structure of which is a derivative of, or substantially similar to, the chemical structure of a controlled substance; or

(B) That has the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance.

(2) "Controlled substance analogue" does not include:

(A) A controlled substance;

(B) Any substance for which there is an approved use or new drug application by the federal food and drug administration;

(C) Any compound, mixture, or preparation that contains any controlled substance that is not for administration to a human being or animal, and that is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; or

(D) Any substance to which an investigational exemption applies under Section 505 of the Food, Drug and Cosmetic Act, 21 U.S.C. § 355, but only to the extent that conduct with respect to the substance is pursuant to such exemption.

(b)

(1) In determining whether a substance is a controlled substance analogue, the following factors shall be considered, along with any other relevant factors:

(A) The difference between the price at which the substance is sold and the price at which the substance it is purported to be or advertised as is normally sold;

(B) Its diversion from legitimate channels, and its clandestine importation, manufacture, or distribution;

(C) The defendants prior convictions, if any, for a violation of any state or federal statute prohibiting controlled substance analogues; and

(D) Comparisons with accepted methods of marketing a legitimate nonprescription drug for medicinal purposes rather than for the purpose of drug abuse or any similar nonmedical use, including:

(1) The packaging of the substance and its appearance in overall finished dosage form;

(2) Oral or written statements or representations concerning the substance;

(3) The methods by which the substance is distributed; and

(4) The manner in which the substance is sold to the public.

(2) In determining whether a substance is a controlled substance analogue, the following scientific or pharmacological factors may be considered, along with any other relevant factors:

- (A) Its actual or relative potential for abuse;
- (B) Scientific evidence of its pharmacological effect, if known;
- (C) The state of current scientific knowledge regarding the substance;
- (D) The history of the substance and its current pattern of abuse;
- (E) The scope, duration and significance of abuse;
- (F) What, if any, risk there is to the public health;
- (G) Its psychic or physiological dependence liability; and
- (H) Whether the substance is an immediate precursor of a substance already controlled under this chapter;

(c) It is an offense to knowingly manufacture, deliver, dispense or sell a controlled substance analogue or to possess a controlled substance analogue with the intent to manufacture, deliver, dispense or sell such substance.

(d) It is an offense to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one (1) gram.

(e) It may be inferred from the amount of controlled substance analogue possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance analogue was possessed with the purpose of selling or otherwise dispensing in violation of subsection (c). It may be inferred from circumstances indicating a casual exchange among individuals of a controlled substance analogue that the controlled substance analogue so exchanged was possessed not with the purpose of selling or otherwise dispensing in violation of subsection (c). The inferences shall be transmitted to the jury by the trial judge's charge, and the jury will consider the inferences along with the nature of the substance possessed when affixing the penalty.

(f)

(1) It is an offense for a person to represent, orally or in writing, advertise, infer or intend that a controlled substance analogue:

(A) Is a derivative of, or substantially similar to, the chemical structure of a controlled substance; or

(B) Has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a control substance.

(2) It is not a defense to prosecution under this subsection (f) that the controlled substance analogue:

(A) Is not a derivative of a controlled substance;

(B) Does not have a chemical structure that is substantially similar to that of a controlled substance; or

(C) Does not have a stimulant, depressant, hallucinogenic effect on the central nervous system substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a control substance.

(g)

(1) A first violation of subsection (c) is a Class D felony.

(2) A second or subsequent violation of subsection (c) is a Class C felony.

(3) If the violation of subsection (c) involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one classification higher than the punishment provided by this subsection for delivering, dispensing or selling to an adult.

(4) A violation of subdivisions (d) and (f) are Class A misdemeanors.

(h) Any disability, disqualification, forfeiture, suspension, revocation, prohibition, tax or other adverse consequence provided by law that may result from a conviction for

an offense involving a controlled substance shall also apply if the conviction involves a controlled substance analogue in violation of subsection (c). Such adverse consequences may include, but shall not be limited to:

- (1) Judgment of infamy;
- (2) Disqualification to hold public office, vote or other rights of citizenship;
- (3) Suspension or revocation of any permit or license other than a driver license;
- (4) Ineligibility to obtain any permit or license other than a driver license;
- (5) Ineligibility for any alternative to incarceration, but eligibility for referral to, and trial, sentencing and treatment by a drug court shall be the same as a person whose violation involves a controlled substance;
- (6) Suspension or expulsion from public schools;
- (7) Civil liability;
- (8) Termination of parental rights; and
- (9) Tax liability under title 67, chapter 4, part 28.

SECTION 3. Tennessee Code Annotated, Section 39-17-438, is amended by deleting subsection (d) and substituting instead the following:

- (d)
- (1) A first violation of this section is a Class D felony.
  - (2) A second or subsequent violation of this section is a Class C felony.
  - (3) If the violation of this section involved the delivery, dispensing or sale of a controlled substance analogue to a minor, the person shall be punished one (1) classification higher than the punishment provided by this subsection for delivering, dispensing or selling to an adult.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.